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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,899	03/29/2001	Jim Paul Haughwout	06975-144001 / Member	5374
26171	7590	09/20/2005	Ser	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER THEIN, MARIA TERESA T	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,899

Applicant(s)

HAUGHWOUT, JIM PAUL

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 90,92-107,109-120 and 122-135 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 90,92-107,109-120 and 122-135 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 27, 2005 has been entered.

Response to Amendment

Applicant's "Request for Continued Examination" filed on June 27, 2005 has been considered with the following effect. **(All numbering of claims are based on the new renumbering.)**

Applicant's response by virtue of amendment to claim 120 has overcome the Examiner's rejection of such claim under 35 USC 101.

Claims 90, 107, 120, and 135 have been amended. Claims 91, 108, and 121 have been cancelled. Claims 90, 92-107, 109-120, and 122-135 are pending in this application and an action on the merits of these claims follows.

Response to Arguments

Applicant's arguments with respect to claims 90, 92-107, 109-120, and 122-135 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 112-137 have been renumbered 111-135.

All rejections are based on the renumbering of the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 90, 93-96, 98-107, 110, 112-120, 123, 125-132 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. patent No. 6,553,113 to Dhir et al.

Regarding claim 90, Dhir discloses a process comprising:

- receiving and handling at a customer service call center an incoming service call from a caller seeking assistance (col. 8, lines 7-11; col. 11, lines 32-42); and
- leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services (col. 3, lines 6-11; col. 3, lines 23-31; col. 8, lines 7-11; col. 12, lines 8-10), the leveraging including:

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- identifying a caller identity or a first caller attribute related to the caller (col. 7, lines 42-51; col. 8, lines 7-11; col. 11, lines 61-65);
- storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch (service(s) or servicing the call) preference of the caller, as an additional attribute, comprising a preference of the caller not to receive one or more undesired sales pitch (col. 7, lines 54-67; col. 8, lines 1-26; col. 9, lines 51-58);
- searching a first electronic database to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute, where the first electronic database includes information gathered about the caller prior to the call (col. 7, lines 54-67; col. 8, lines 1-26; col. 9, lines 51-58; col. 11, lines 36-44; Figure 7);
- searching a second electronic database of potential sales pitches (service(s) or servicing the call) to identify a first sales pitch that is not one of the one or more undesired sales pitches based upon the additional attribute of the caller (col. 8, lines 1-26; col. 12, lines 1-18; col. 12, lines 33-49; Figure 7);
- routing the service call to a human operator for presentation of the first sales pitch to the caller (col. 3, lines 1-2; col. 6, lines 11-12; col. 8, lines 14-15); and
- assisting the human operator in presenting the first sales pitch to the caller (col. 3, lines 1-2; col. 6, lines 11-12; col. 8, lines 14-15).

Regarding claims 93-96, 110, 112, 123, and 125, Bunting discloses a preference to receive a certain type of sales pitch; populating the first electronic database prior to the call with information indicative of the caller; populating the first electronic database with information indicative of a response by the caller to the first sales pitch; and populating the first electronic database with information indicative of responses made by the caller in response to past sales pitch presentations (col. 5, lines 51-62; col. 7, lines 15-33; col. 7, lines 54-67; col. 8, lines 1-15).

Regarding claims 98-102, 113-117, and 126-130, Dhir discloses searching the second electronic data base for a second sales pitch for the caller immediately after the caller provides the response to the first sales pitch (col. 8, lines 1-25; col. 12, lines 1-30; Figures 7-9); wherein assisting the human operator in presenting the first sale pitch comprises displaying at least a portion of the selected first sales pitch on a display of the human operator (col. 3, lines 1-2; col. 6, lines 11-12; col. 8, lines 14-15); wherein the first sales pitch is identified with the second database only when at least the additional attribute of the caller indicates that the caller satisfies a predetermined criterion (col. 5, lines 51-62; col. 7, lines 54-67; col. 9, lines 51-55; col. 12, lines 56-66); wherein the first caller attribute indicates a geographic residence of the caller, and identifying the first sale pitch includes making unavailable selection one or more sales pitches of the second electronic database based upon the geographic residence of the caller (col. 6, lines 24-34; col. 11, lines 32-37); and wherein the additional attribute of the caller includes a credit status for the caller and identifying the first sales pitch includes

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selecting the first sales pitch for the caller only when the credit status of the caller is satisfactory (col. 7, lines 15-51; col. 10, lines 40-47).

Regarding claims 103-105, 118-119, and 131-132, Dhir discloses transferring the caller to a commercial partner that provides a product or service that corresponds to the selected first sales pitch if the caller has expressed interest in the first sales pitch (col. 4, lines 30-31; col. 7, lines 23-26; col. 12, lines 7-18); communicating information related to the caller to the commercial partner substantially in real time (col. 5, lines 14-16; col. 7, lines 5-8); and wherein the information comprises information related to the first sales pitch presented to the caller (col. 7, lines 15-51; col. 8, lines 1-25; col. 12, lines 1-18).

Regarding claim 106, Bunting discloses transferring the caller to a commercial partner that provides a product service that corresponds to the selected first sales pitch; wherein the commercial partner provides a second sales pitch to the caller; receiving feedback information from the commercial partner regarding a response by the caller to the second sales pitch; and populating the first electronic database with information indicative of the response by the caller to the second sale pitch. (See at least col. 2, lines 23-33; col. 8, lines 44-47; col. 11, lines 14-23; col. 12, lines 6-17; col. 13, lines 41 – col. 14, line 5; col. 14, lines 47-52; Figure 12)

Regarding claims 107 and 120, Bunting discloses a system and computer program comprising:

- an identification component or code segment that determines a caller identity related to a caller seeking assistance from a customer service call center (col. 7, lines 34-51; col. 11, lines 49-66);

- a first electronic database configured to store as an attribute related to the caller and prior to the receipt of the incoming call from the caller, a sales pitch (service(s) or servicing a call) preference of the caller comprising a preference of the caller not to receive one or more undesired sales pitch (col. 7, lines 54-67; col. 8, lines 1-26; col. 9, lines 51-58)
- a search component configured to identify in the first electronic database component or code segment that identifies the attribute related to the caller based on the caller identity (col. 7, lines 34-51; col. 11, line 49-col. 12, line 11; col. 12, lines 56-66);
- a second electronic database component or code segment that identifies a first sale pitch that is not one of the one or more undesired sales pitches based on at least one the attribute related to the caller (col. 8, lines 1-26; col. 12, lines 1-18; col. 12, lines 33-49; Figure 7);
- a call router that routes the service call to a human operator to assist the caller and for presentation of the first sales pitch to the caller (col. 3, lines 1-2; col. 6, lines 11-12; col. 8, lines 14-15); and
- a presentation component or code segment that assists the human operator to present the first sales pitch to the caller (col. 3, lines 1-2; col. 6, lines 11-12; col. 8, lines 14-15).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 92, 109, and 122 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,553,113 to Dhir et al. in view of U.S. Patent Application Publication No. US 2001/0014868 to Herz et al.

Regarding claims 92, 109, and 122, Dhir substantially discloses the claimed invention, however, it does not disclose the additional attribute of the caller comprises a preference not to receive a sales pitch or any sales pitch. Dhir discloses customer profile behavior module which stores and reflects on customer profiles and behavior (col. 7, lines 115-17). The customer profile behavior data contains the data that is used by the call routing system to make strategic decisioning predictions about caller needs (col. 7, lines 30-34).

Herz, on the other hand, teaches the additional attribute of the caller comprises a preference not to receive a sales pitch or any sales pitch (paragraph 2; paragraph 39). (Profiles of shoppers based on their demographics and their history of shopping behavior, which history includes both their purchases and their requests for, or reactions to product information (paragraph 2). Herz teaches shopper's interest and feedback in an offer (sales pitch) (paragraph 39). The shopper indicates feedback to offers of distaste, no special interest to great interest (paragraph 39). The feedback information

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is used to update the shopper's profile in the shopper database which will help determine the shopper's preferences for future shopping (paragraph 39)).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Dhir, to include the additional attribute of the caller comprises a preference not to receive a sales pitch or any sales pitch, as taught by Herz, in order to help determine the shopper's preference (Herz, paragraph 39).

Claims 97, 111, 124, and 133-135 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,553,113 to Dhir et al. in view of U.S. Patent Application No. 6,134,315 to Galvin.

Regarding claims 97, 111 and 124, Dhir substantially discloses the claimed invention, however, it does not disclose populating the database with information indicative of past misbehavior of the caller. Dhir discloses customer profile behavior module which stores and reflects on customer profiles and behavior (col. 7, lines 115-17). The customer profile behavior data contains the data that is used by the call routing system to make strategic decisioning predictions about caller needs (col. 7, lines 30-34).

Galvin, on the other hand, teaches populating the database with information indicative of past misbehavior of the caller (col. 6, lines 60-66).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Dhir, to include populating the database with information indicative of past misbehavior of the caller, as taught by

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Galvin, in order to collect and monitor customer status that may affect network level routing of calls (Galvin, col. 9, lines 36-41).

Regarding claims 133-135, Dhir substantially discloses the claimed invention, however, it does not expressly disclose information indicative of the past misbehavior. Dhir discloses customer profile behavior module which stores and reflects on customer profiles and behavior (col. 7, lines 115-17). The customer profile behavior data contains the data that is used by the call routing system to make strategic decisioning predictions about caller needs (col. 7, lines 30-34).

Galvin, on the other hand, teaches information indicative of the past misbehavior (col. 6, lines 60-66).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the process of Dhir, to include information indicative of the past misbehavior, as taught by Galvin, in order to collect and monitor customer status that may affect network level routing of calls (Galvin, col. 9, lines 36-41).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,822,410 to McCausland et al. discloses a churn amelioration process which proactively or reactively identifies a specific customer, then calculates churn vulnerability and customer worth.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 571-272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mtot
September 16, 2005


JAMES MCCLELLAN
PRIMARY EXAMINER